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SENATE BILL 6551

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State of Washington

60th Legislature

2008 Regular Session

By Senator Roach

Read first time 01/18/08. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the special sex offender sentencing alternative;  
2 and amending RCW 9.94A.670.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read  
5 as follows:

6 (1) Unless the context clearly requires otherwise, the definitions  
7 in this subsection apply to this section only.

8 (a) "Judicial officer" means a person authorized to hold or preside  
9 over a court.

10 (b) "School employee" means any employee, including coaches, of a  
11 common school defined in RCW 28A.150.020 or a grade kindergarten  
12 through twelve employee of a private school under chapter 28A.195 RCW,  
13 who is not enrolled as a student of the common school or private  
14 school.

15 (c) "Sex offender treatment provider" or "treatment provider" means  
16 a certified sex offender treatment provider or a certified affiliate  
17 sex offender treatment provider as defined in RCW 18.155.020.

18 ((+b+)) (d) "Social service counselor" means anyone engaged in a  
19 professional capacity during the regular course of employment in

1 encouraging or promoting the health, welfare, support, or education of  
2 children, or providing social services to adults or families, including  
3 mental health, drug and alcohol treatment, and domestic violence  
4 programs, whether in an individual capacity, or as an employee or agent  
5 of any public or private organization or institution.

6 (e) "Substantial bodily harm" means bodily injury that involves a  
7 temporary but substantial disfigurement, or that causes a temporary but  
8 substantial loss or impairment of the function of any body part or  
9 organ, or that causes a fracture of any body part or organ.

10 ((+e)) (f) "Victim" means any person who has sustained emotional,  
11 psychological, physical, or financial injury to person or property as  
12 a result of the crime charged. "Victim" also means a parent or  
13 guardian of a victim who is a minor child unless the parent or guardian  
14 is the perpetrator of the offense.

15 (2) An offender is eligible for the special sex offender sentencing  
16 alternative if:

17 (a) The offender has been convicted of a sex offense other than a  
18 violation of RCW 9A.44.050 or a sex offense that is also a serious  
19 violent offense. If the conviction results from a guilty plea, the  
20 offender must, as part of his or her plea of guilty, voluntarily and  
21 affirmatively admit he or she committed all of the elements of the  
22 crime to which the offender is pleading guilty. This alternative is  
23 not available to offenders who plead guilty to the offense charged  
24 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d  
25 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

26 (b) The offender has no prior convictions for a sex offense as  
27 defined in RCW 9.94A.030 or any other felony sex offenses in this or  
28 any other state;

29 (c) The offender has no prior adult convictions for a violent  
30 offense that was committed within five years of the date the current  
31 offense was committed;

32 (d) The offense did not result in substantial bodily harm to the  
33 victim;

34 (e) The offender had an established relationship with, or  
35 connection to, the victim such that the sole connection with the victim  
36 was not the commission of the crime; ((and))

37 (f) The offender is not a school employee who committed the offense  
38 against a registered student of the school;

1       (g) The offender is not a social service counselor who committed  
2 the offense against a patient;

3       (h) The offender is not an elected official or judicial officer who  
4 used his or her position, or engaged in misconduct, to commit the  
5 offense;

6       (i) The offender is not a member of the clergy or a priest; and

7       (j) The offender's standard sentence range for the offense includes  
8 the possibility of confinement for less than eleven years.

9       (3) If the court finds the offender is eligible for this  
10 alternative, the court, on its own motion or the motion of the state or  
11 the offender, may order an examination to determine whether the  
12 offender is amenable to treatment.

13       (a) The report of the examination shall include at a minimum the  
14 following:

15       (i) The offender's version of the facts and the official version of  
16 the facts;

17       (ii) The offender's offense history;

18       (iii) An assessment of problems in addition to alleged deviant  
19 behaviors;

20       (iv) The offender's social and employment situation; and

21       (v) Other evaluation measures used.

22       The report shall set forth the sources of the examiner's  
23 information.

24       (b) The examiner shall assess and report regarding the offender's  
25 amenability to treatment and relative risk to the community. A  
26 proposed treatment plan shall be provided and shall include, at a  
27 minimum:

28       (i) Frequency and type of contact between offender and therapist;

29       (ii) Specific issues to be addressed in the treatment and  
30 description of planned treatment modalities;

31       (iii) Monitoring plans, including any requirements regarding living  
32 conditions, lifestyle requirements, and monitoring by family members  
33 and others;

34       (iv) Anticipated length of treatment; and

35       (v) Recommended crime-related prohibitions and affirmative  
36 conditions, which must include, to the extent known, an identification  
37 of specific activities or behaviors that are precursors to the

1 offender's offense cycle, including, but not limited to, activities or  
2 behaviors such as viewing or listening to pornography or use of alcohol  
3 or controlled substances.

4 (c) The court on its own motion may order, or on a motion by the  
5 state shall order, a second examination regarding the offender's  
6 amenability to treatment. The examiner shall be selected by the party  
7 making the motion. The offender shall pay the cost of any second  
8 examination ordered unless the court finds the defendant to be indigent  
9 in which case the state shall pay the cost.

10 (4) After receipt of the reports, the court shall consider whether  
11 the offender and the community will benefit from use of this  
12 alternative, consider whether the alternative is too lenient in light  
13 of the extent and circumstances of the offense, consider whether the  
14 offender has victims in addition to the victim of the offense, consider  
15 whether the offender is amenable to treatment, consider the risk the  
16 offender would present to the community, to the victim, or to persons  
17 of similar age and circumstances as the victim, and consider the  
18 victim's opinion whether the offender should receive a treatment  
19 disposition under this section. The court shall give great weight to  
20 the victim's opinion whether the offender should receive a treatment  
21 disposition under this section. If the sentence imposed is contrary to  
22 the victim's opinion, the court shall enter written findings stating  
23 its reasons for imposing the treatment disposition. The fact that the  
24 offender admits to his or her offense does not, by itself, constitute  
25 amenability to treatment. If the court determines that this  
26 alternative is appropriate, the court shall then impose a sentence or,  
27 pursuant to RCW 9.94A.712, a minimum term of sentence, within the  
28 standard sentence range. If the sentence imposed is less than eleven  
29 years of confinement, the court may suspend the execution of the  
30 sentence and impose the following conditions of suspension:

31 (a) The court shall order the offender to serve a term of  
32 confinement of up to twelve months or the maximum term within the  
33 standard range, whichever is less. The court may order the offender to  
34 serve a term of confinement greater than twelve months or the maximum  
35 term within the standard range based on the presence of an aggravating  
36 circumstance listed in RCW 9.94A.535(3). In no case shall the term of  
37 confinement exceed the statutory maximum sentence for the offense. The  
38 court may order the offender to serve all or part of his or her term of

1 confinement in partial confinement. An offender sentenced to a term of  
2 confinement under this subsection is not eligible for earned release  
3 under RCW 9.92.151 or 9.94A.728.

4 (b) The court shall place the offender on community custody for the  
5 length of the suspended sentence, the length of the maximum term  
6 imposed pursuant to RCW 9.94A.712, or three years, whichever is  
7 greater, and require the offender to comply with any conditions imposed  
8 by the department under RCW 9.94A.720.

9 (c) The court shall order treatment for any period up to five years  
10 in duration. The court, in its discretion, shall order outpatient sex  
11 offender treatment or inpatient sex offender treatment, if available.  
12 A community mental health center may not be used for such treatment  
13 unless it has an appropriate program designed for sex offender  
14 treatment. The offender shall not change sex offender treatment  
15 providers or treatment conditions without first notifying the  
16 prosecutor, the community corrections officer, and the court. If any  
17 party or the court objects to a proposed change, the offender shall not  
18 change providers or conditions without court approval after a hearing.

19 (d) As conditions of the suspended sentence, the court shall impose  
20 specific prohibitions and affirmative conditions relating to the known  
21 precursor activities or behaviors identified in the proposed treatment  
22 plan under subsection (3)(b)(v) of this section or identified in an  
23 annual review under subsection (7)(b) of this section.

24 (5) As conditions of the suspended sentence, the court may impose  
25 one or more of the following:

26 (a) Crime-related prohibitions;

27 (b) Require the offender to devote time to a specific employment or  
28 occupation;

29 (c) Require the offender to remain within prescribed geographical  
30 boundaries and notify the court or the community corrections officer  
31 prior to any change in the offender's address or employment;

32 (d) Require the offender to report as directed to the court and a  
33 community corrections officer;

34 (e) Require the offender to pay all court-ordered legal financial  
35 obligations as provided in RCW 9.94A.030;

36 (f) Require the offender to perform community restitution work; or

37 (g) Require the offender to reimburse the victim for the cost of  
38 any counseling required as a result of the offender's crime.

1 (6) At the time of sentencing, the court shall set a treatment  
2 termination hearing for three months prior to the anticipated date for  
3 completion of treatment.

4 (7)(a) The sex offender treatment provider shall submit quarterly  
5 reports on the offender's progress in treatment to the court and the  
6 parties. The report shall reference the treatment plan and include at  
7 a minimum the following: Dates of attendance, offender's compliance  
8 with requirements, treatment activities, the offender's relative  
9 progress in treatment, and any other material specified by the court at  
10 sentencing.

11 (b) The court shall conduct a hearing on the offender's progress in  
12 treatment at least once a year. At least fourteen days prior to the  
13 hearing, notice of the hearing shall be given to the victim. The  
14 victim shall be given the opportunity to make statements to the court  
15 regarding the offender's supervision and treatment. At the hearing,  
16 the court may modify conditions of community custody including, but not  
17 limited to, crime-related prohibitions and affirmative conditions  
18 relating to activities and behaviors identified as part of, or relating  
19 to precursor activities and behaviors in, the offender's offense cycle  
20 or revoke the suspended sentence.

21 (8) At least fourteen days prior to the treatment termination  
22 hearing, notice of the hearing shall be given to the victim. The  
23 victim shall be given the opportunity to make statements to the court  
24 regarding the offender's supervision and treatment. Prior to the  
25 treatment termination hearing, the treatment provider and community  
26 corrections officer shall submit written reports to the court and  
27 parties regarding the offender's compliance with treatment and  
28 monitoring requirements, and recommendations regarding termination from  
29 treatment, including proposed community custody conditions. The court  
30 may order an evaluation regarding the advisability of termination from  
31 treatment by a sex offender treatment provider who may not be the same  
32 person who treated the offender under subsection (4) of this section or  
33 any person who employs, is employed by, or shares profits with the  
34 person who treated the offender under subsection (4) of this section  
35 unless the court has entered written findings that such evaluation is  
36 in the best interest of the victim and that a successful evaluation of  
37 the offender would otherwise be impractical. The offender shall pay  
38 the cost of the evaluation. At the treatment termination hearing the

1 court may: (a) Modify conditions of community custody, and either (b)  
2 terminate treatment, or (c) extend treatment in two-year increments for  
3 up to the remaining period of community custody.

4 (9)(a) If a violation of conditions other than a second violation  
5 of the prohibitions or affirmative conditions relating to precursor  
6 behaviors or activities imposed under subsection (4)(d) or (7)(b) of  
7 this section occurs during community custody, the department shall  
8 either impose sanctions as provided for in RCW 9.94A.737(~~(+2)~~) (3) (a)  
9 or refer the violation to the court and recommend revocation of the  
10 suspended sentence as provided for in subsections (6) and (8) of this  
11 section.

12 (b) If a second violation of the prohibitions or affirmative  
13 conditions relating to precursor behaviors or activities imposed under  
14 subsection (4)(d) or (7)(b) of this section occurs during community  
15 custody, the department shall refer the violation to the court and  
16 recommend revocation of the suspended sentence as provided in  
17 subsection (10) of this section.

18 (10) The court may revoke the suspended sentence at any time during  
19 the period of community custody and order execution of the sentence if:  
20 (a) The offender violates the conditions of the suspended sentence, or  
21 (b) the court finds that the offender is failing to make satisfactory  
22 progress in treatment. All confinement time served during the period  
23 of community custody shall be credited to the offender if the suspended  
24 sentence is revoked.

25 (11) The offender's sex offender treatment provider may not be the  
26 same person who examined the offender under subsection (3) of this  
27 section or any person who employs, is employed by, or shares profits  
28 with the person who examined the offender under subsection (3) of this  
29 section, unless the court has entered written findings that such  
30 treatment is in the best interests of the victim and that successful  
31 treatment of the offender would otherwise be impractical. Examinations  
32 and treatment ordered pursuant to this subsection shall only be  
33 conducted by certified sex offender treatment providers or certified  
34 affiliate sex offender treatment providers under chapter 18.155 RCW  
35 unless the court finds that:

36 (a) The offender has already moved to another state or plans to  
37 move to another state for reasons other than circumventing the  
38 certification requirements; or

1 (b)(i) No certified sex offender treatment providers or certified  
2 affiliate sex offender treatment providers are available for treatment  
3 within a reasonable geographical distance of the offender's home; and

4 (ii) The evaluation and treatment plan comply with this section and  
5 the rules adopted by the department of health.

6 (12) If the offender is less than eighteen years of age when the  
7 charge is filed, the state shall pay for the cost of initial evaluation  
8 and treatment.

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